IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1128 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
JOKHUSINH - Defendant(s)

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Appearance :
MR KT DAVE ASST GOVERNMENT PLEADER for Appellant(s) : 1,
None for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/04/2006

ORAL JUDGMENT

1. This appeal is filed by the State Government and another under Section-96 of the Code of Civil Procedure challenging the judgment and decree

passed by the learned Judge, City Civil Court, Court No.13 at Ahmedabad dated 27.3.1981 in decreeing the Civil Suit No.638 of 1978 by which the appellants herein – original defendants are permanently restrained from evicting the plaintiff or plaintiff's tenants from the suit plot under Section-202 of the Bombay Land Revenue Code, 1879 by further declaring that the notices issued by the defendant No.2 under Section-202 of the Bombay Land Revenue Code, 1879 as illegal and invalid. However, the learned Trial Judge clarified that it would be open to the appellants herein, if deemed fit and proper, to take appropriate action against the plaintiff or his alleged tenants for his or their eviction from the suit plot under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

2. It appears from the record that the judgment and decree the respondent herein – original

plaintiff filed a suit for permanent injunction restraining the appellants - original defendants from implementing the notice of eviction under Section-202 of the Bombay Land Revenue Code, 1879 for evicting the original plaintiff's tenants in the property being of a piece of land bearing Survey No.154 Part situated in Rajpur Hirpur Sim in the Taluka, City in the city of Ahmedabad.

3. It also appears from the record that the appellant No.2 has served a notice of eviction under Section-202 of the Bombay Land Revenue Code alleging interalia that the construction existed in the suit land are unauthorised construction and the same may be removed and Lalbhai Fakirbhai from whom the original plaintiff derived the title and/or possession has no right worth the name over the suit land. The parties did not lead any oral evidence vide Pursis Exh.12. The Learned trial court however considering the provisions of Section-19 of Gujarat Public Premises (Eviction

of Unauthorised Occupants) Act, 1972 has observed that it has an effect of repealing of Section-202 of the Bombay Land Revenue Code and thereby, it is held that the impugned notice issued under Section-202 of the Bombay Land Revenue Code is illegal and invalid and accordingly, permanently restrained the appellants from evicting the original plaintiff or plaintiff's tenants from the suit land. Being aggrieved and dissatisfied with the same, the appellants have preferred the present appeal.

4. Shri K.T.Dave, learned AGP appearing on behalf of the appellants has vehemently submitted that the learned trial court has materially erred in holding that in view of Section-19 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972, it has effect of repealing the Section-202 of the Bombay Land Revenue Code, Shri Dave has submitted that only on that ground the trial court has decreed the

suit and has held that the notices under Section-202 of the Bombay Land Revenue Code is illegal and invalid. He has also further submitted that as such, the suit itself would not have been maintainable against the notice under Section-202 of the Bombay Land Revenue Code as against the order passed under Section-202, a statutory remedy of appeal is provided under the Bombay Land Revenue Code before the State Government and therefore, it is requested to allow the present appeal.

5. Though served, nobody appears on behalf of the opponent.

6. I have gone through the judgment and decree passed by the learned trial court. The appellants herein issued notices under Section-202 of the Bombay Land Revenue Code against the respondent herein for evicting from the suit land in question by holding that the construction is

unauthorised. It is required to be noted that against the order of eviction under Section-202 of the Bombay Land Revenue Code, there is statutory remedy available under the Bombay Land Revenue Code itself before the State Government and therefore, whether against the notices under Section-202 of the Bombay Land Revenue Code the suit is maintainable or not, is very much doubtful. It appears that the learned trial court has relied upon Section-19 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, by which it has repealed Act of 1955 and on the basis of the same, the learned trial court has held that in view of the provision of Section-19 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 it has effect of Repeal Section-202 of the Bombay Land Revenue Code. It is not appreciable at all how in view of Section-19 of the Act - Repealing Act of 1955, Section-202 of the Bombay Land Revenue Code would be repealed. Under the

circumstances, the learned trial court has materially erred in holding that the impugned notices under Section-202 of the Bombay Land Revenue Code were illegal and invalid. Under the circumstances, the judgment and decree passed by the learned trial court deserves to be quashed and set aside.

7. For the reasons stated above, the appeal is allowed. The judgment and decree passed by the learned Judge, City Civil Court, Court No.13 at Ahmedabad dated 27.3.1981 in decreeing the Civil Suit No.638 of 1978 is hereby quashed and set aside. However, there shall be no order as to costs.

[M.R.Shah, J.]

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